

Members

Sen. Beverly Gard, Chairperson
Sen. Frank Mrvan
Sen. Edward Charbonneau
Sen. Karen Tallian
Rep. Ryan Dvorak
Rep. David Wolkins
Rep. Matt Pierce
Rep. Timothy Neese
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Calvin Davidson
Jon H. Moll
Thomas Easterly
Heather Hill



ENVIRONMENTAL QUALITY SERVICE COUNCIL

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MEETING MINUTES¹

Meeting Date: October 6, 2009
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Beverly Gard, Chairperson; Sen. Frank Mrvan; Sen. Edward Charbonneau; Sen. Karen Tallian; Rep. David Wolkins; Doug Meyer; Dwayne Burke; John Hardwick; Art Umble; Calvin Davidson; Jon H. Moll; Thomas Easterly; Heather Hill.

Members Absent: Rep. Ryan Dvorak; Rep. Matt Pierce; Rep. Timothy Neese; Stephen L. Murray; Dave Wyeth.

1. Call to Order Sen. Gard called the meeting to order at 10:05 A.M.

Sen. Gard introduced new Council member Heather Hill.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

2. Presentations Concerning Institutional Controls

John Kyle, Barnes & Thornburg, made a presentation concerning institutional controls, which include environmental restrictive covenants (ERC's) and environmental restrictive ordinances (ERO's). He addressed the following:

- The characteristics and uses of ERC's and ERO's
- _____ • The importance of insuring that institutional controls are effective and that the public knows how to access information on institutional controls
- _____ • An offer made by Professor Jim Barnes, School of Public and Environmental Affairs, Indiana University (SPEA), for SPEA and the Maurer School of Law, Indiana University, to conduct a national survey of institutional controls and to report the results to the Council
- _____ • The unsuccessful proposal in SB 460 - 2009 for an institutional control registry and compliance inspection system paid for through a trust fund funded from fees on entities that record ERC's

Sen. Gard offered her opinion that the proposed national institutional control survey would be welcome and useful.

In response to questions from Council members, Mr. Kyle:

- Addressed the applicability of ERC's to various classes of property
- Discussed the importance of maintaining the current requirement for recording ERC's with the County Recorder
- _____ • Described the benefits offered by an institutional control registry beyond those of the recording system alone

Peggy Dorsey, Deputy Assistant Commissioner, Indiana Department of Environmental Management (IDEM), made a presentation entitled Institutional Controls Registry (Exhibit #1). In response to questions from Council members, Ms. Dorsey:

- With respect to ERC's, described the difference between an audit and an inspection
- _____ • Described the absence of a pattern in the reasons for failures of ERC's in other states
- _____ • Described the process for IDEM approval of ERC's and IDEM's inability to control the county recording process
- _____ • Discussed the possibility of setting trust fund fees based on the level and frequency of inspection required by an ERC

Kathy Lucas, Bose, McKinney & Evans, made a presentation (Exhibit #2) on behalf of the ERC Subcommittee of the Legislative Committee of the Environmental Section of the Indiana State Bar Association. In response to questions from Council members, Ms. Lucas:

- Noted the importance of establishing a consistent method of recording ERC's in all counties
- _____ • Discussed the possibility that the enactment of the Uniform Environmental Covenants Act might address some of the institutional control issues
- _____ • Discussed the availability of her group to work on the institutional control issues

Chuck Muller, Director of Public Awareness, Indiana 811 ("call before you dig" program of the Indiana Underground Plant Protection Service) made a presentation (Exhibit #3). In response to questions from Council members, Mr. Muller:

- Discussed the possibility of integrating the One Call system with the IDEM institutional control registry
- Indicated that Indiana 811 is the only entity offering One Call services
- Described the system membership and the method of application of fees to system users

A memorandum (Exhibit #4) from Rhonda Cook, Director of Government Affairs, Indiana Association of Cities and Towns, concerning the implementation of P.L. 78 -2009 (HEA 1162) was distributed.

3. Final Report Recommendations Sen. Gard asked Council members to forward any proposed recommendations for the Council's final report.

4. Adjournment Sen. Gard adjourned the meeting at 11:55 A.M.
